Lee Beng Lai & Ors v Tetuan Tokoyaki Property Sdn Bhd

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO A-02-809 OF 1998
DENIS ONG, KC VOHRAH AND MOHD NOOR AHMAD JJCA
10 MAY 2002

Civil Procedure *— Summary possession of land — Application for — Whether proper case to be considered under O 89 of the Rules of the High Court 1980 — Whether serious issues existed — Whether appropriate for plaintiff to resort to O 89 of the Rules of the High Court 1980 to obtain possession — Rules of the High Court 1980 O 89*

Land Law *— Trespass — Unlawful occupation — Defendants occupied land without licence or consent — Whether defendants were trespassers — Whether defendants were in wrongful occupation of land*

The plaintiff, the registered owner of a piece of land filed an application under O 89 of the Rules of the High Court 1980 ('the RHC') to evict the defendants who occupied the said land without licence or consent. The High Court allowed the application and three of the defendants appealed to the Court of Appeal.

Held, dismissing the appeal:

The plaintiff was the registered owner of the said land and the defendants did not have any proof that they had been given the permission or licence by the plaintiff or the previous owner of the land (ie the state) prior to the plaintiff's occupation of the said property. It was proper and appropriate for the High Court to make the order under O 89 of the RHC to evict the defendants as there were no serious issues. The defendants were trespassers in wrongful occupation of the land (see pp 289F–G, 290B).

[Bahasa Malaysia summary

Plaintif, tuanpunya berdaftar sebidang tanah telah memfailkan satu permohonan di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT') untuk menghalau defendan-defendant yang menetap di atas tanah tersebut tanpa lesen atau kebenaran. Mahkamah Tinggi telah membenarkan permohonan tersebut dan tiga daripada defendan tersebut telah membuat rayuan kepada Mahkamah Rayuan.

Diputuskan, menolak rayuan tersebut:

Plaintif adalah tuanpunya berdaftar tanah tersebut dan defendan-defendan tidak mempunyai apa-apa bukti bahawa mereka telah diberikan kebenaran atau lesen oleh plaintif atau bekas tuanpunya tanah tersebut (iaitu kerajaan negeri) sebelum penetapan plaintif di atas hartanah tersebut. Ia adalah betul dan tepat untuk Mahkamah

Tinggi membuat perintah di bawah A 89 KMT untuk menghalau defendan-defendan tersebut kerana tiada persoalan yang serius. Defendan-defendan merupakan penceroboh yang menetap di atas tanah tersebut (lihat ms 289F–G, 290B).]

Notes

For cases on application for, summary possession of land, see 2 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 6238–6247.

For cases on unlawful occupation, trespass, see 8 *Mallal's Digest* (4th Ed, 2001 Reissue) paras 4090–4099.

Legislation referred to

Rules of the High Court 1980 O 89

Appeal from: Originating Summons No 21–1 of 1998 (High Court, Taiping)

Awtar Singh (*AS Saini & Assoc*) for the appellants.
Jerald Gomez (*Jerald Gomez & Assoc*) for the respondent.

KC Vohrah JCA (delivering judgment of the court): In the High Court Taiping, Tokoyaki Property Sdn Bhd ('the plaintiff') filed an application to evict the six defendants in Originating Summons No 24–1–1998 from a piece of land under O 89 of the Rules of the High Court 1980 ('the RHC'). The High Court allowed the application and three of the defendants, the first, fifth and sixth defendants appealed to the Court of Appeal against that decision. We dismissed the appeal and we now give our reasons.

The plaintiff had filed an application for the undivided land HS(D) LM 8308 No PT 10787, Mukim Asam Kumbang, Daerah Larut dan Matang, Perak to be returned to the plaintiff on the ground that each of the defendants who occupied the land were in occupation without licence or consent under O 89 of the RHC.

It is not disputed that the plaintiff became the registered owner of the said land on 22 March 1997 and that the plaintiff had on several occasions demanded that the defendants give possession of the said land to the plaintiff. It included the last letter of demand dated 15 May 1999. The defendants did not vacate the said land.

The defendants in their several affidavits attempted to show that they had been given 'permission to occupy part of the said land for 99 years' by the Land Office of Larut and Matang in the year 1982, subject to certain conditions in a New Village Scheme (Rancangan Perkampongan Tersusun) known as Kampong Benggali, which conditions included the payment of certain sums of money relating to premium, quit rent and survey. There is nothing, however, in the letter that is exhibited in respect of the second defendant to identify the land (see appeal record letter dated 4 February 1982 at p 110) save that it is a piece of land in 'Rancangan Perkampongan Kg Benggali, Mukim Asam Kumbang'. The defendants had all stayed in the

said land and had built their houses there. They alleged that they had on several occasions requested the said land office to issue land titles to them in respect of the land which they occupied, but the land office had not done so. The land office had not consulted them nor taken back their land in accordance with existing procedures and they asserted they had a right to be owners of the land from the point of view of equity and there was no necessity to get the permission of the plaintiff to stay on the land.

There is, however, no dispute that the defendants were in fact, alienated pieces of land in the location known as 'Rancangan Perkampongan Tersusun Kampong Benggali' Perak (see for example appeal record, FMH-3, copy of land title, at p 133) each with a registered title lot number, and it is clear from the affidavit evidence that these lots, although near the plaintiff's registered lot, do not involve the plaintiff's lot.

In the affidavit of reply, the plaintiff pointed out that it had employed a surveyor to survey the said land and there was never at any time a plan by the Government to put a new village known as Kampong Benggali as alleged by the occupants on the said land of the plaintiff, and that the said Kampong Benggali was near to the said land but did not involve it.

In other affidavits filed on the plaintiff's behalf, it was disclosed that on an enquiry having been made in a letter to the Land Administrator of Daerah Larut and Matang, it was found that through a letter in reply, that in fact, land lots had been approved and alienated (with the respective and registered title numbers) to the defendants in respect of Rancangan Kampong Tersusun Kampong Benggali and that in fact registered titles had been issued in respect of them (see appeal record, FMH-2, letters at pp 128, 129 and 131; FMH-3, copy of land title in the name of the first defendant, at p 134).

The learned judge found that on the undisputed facts, the plaintiff is the registered owner of the said land and the defendants did not have any proof that they had been given the permission or licence by the plaintiff or the previous owner of the land (ie the state) prior to the plaintiff's occupation of the said property, and that it was proper and appropriate for the High Court to make the order under O 89 of the RHC to evict the defendants as there were no serious issues.

We entirely agree with the view of the High Court. Although, as the learned judge observed, the defendants had alleged that they had received an offer letter for the alienation of land by the state authority, there was no evidence at all that the lands alienated referred to the land occupied by the defendants, ie the registered land of the plaintiff. Further, as was observed by the learned judge, the explanatory letter by the Larut and Matang District Office (signed on behalf of the land administrator (see appeal record, PMH-2 at p 131 as previously noted) confirmed that the alienated land of the defendants were outside the area of the plaintiff's said land.

As we had observed earlier, the state authority in their offer letter had not given any definite identification marks of the lots of land to the defendants except that they were to be located in 'Rancangan Perkampongan Kampong Benggali, Mukim Asam Kumbang'. The letter

contained the conditions which the defendants had to comply with to be alienated their lots of land. It is a logical conclusion drawn by the judge, without any need for any further litigation on the point, that the defendants in this case, had, as early as 1982 occupied the land which was not alienated to them and that they had been alienated pieces of land not involving the said land that was alienated to the plaintiff. The state authority did not grant them licences nor give them permission to stay on that land. The defendants were trespassers in wrongful occupation of the land. The learned judge was correct in making the order of possession against the defendants.

We therefore dismissed the appeal and the connected the appeals in 810 and 811 with one set of costs to the respondent.

Appeal dismissed.

Reported by Peter Ling